

USSN 09/540,178

Page 7

REMARKS

This response is intended as a full and complete response to the final Office Action mailed December 28, 2005. In the Action, the Examiner notes that claims 1-14 and 26 are pending, of which claims 1-14 and 26 stand rejected. Claims 17-19 were previously withdrawn.

In view of the following discussion, the Applicant submits that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103. Therefore, Applicant believes that this application is now in condition for allowance.

It is to be understood that Applicant does not acquiesce to the Examiner's characterizations of the art of record or to Applicant's subject matter recited in the pending claims. Further, Applicant is not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant response.

REJECTIONS

REJECTION OF CLAIMS UNDER 35 U.S.C. §103(a)

Claims 1-10 and 26

The Examiner has rejected claims 1-10 and 26 under 35 U.S.C. §103 as being unpatentable over Edmonds et al. (U.S. Patent No. 6,412,079 hereinafter "Edmonds") in view of Imanaka (European Patent No. EP0854610 hereinafter "Imanaka") and further in view of Sawicz et al. (U.S. Patent No. 5,889,775 hereinafter "Sawicz"). The rejection is respectfully traversed.

In rejecting claims under 35 U.S.C. §103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966) and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from

423837-1

USSN 09/540,178

Page 8

some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudlik-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985); ACS Hosp. Sys., Inv. V. Motefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essentially part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole. See id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

Independent claim 1 recites (emphasis added):

1. In a video distribution system having provider equipment including a head-end, and associated subscriber equipment, an apparatus for improving fault tolerance, comprising:
 - a server comprising a plurality of server modules for storing content;
 - a video switch coupled to each of said server modules at said head-end for forwarding requested content from at least one of said plurality of server modules to said subscriber equipment;
 - a plurality of head-end controllers coupled to each server module of said plurality of server modules via at least two signal paths, wherein each communication between a head-end controller and a server module is coincidentally sent through the at least two signal paths.

None of the references Edmonds, Imanaka, and Sawicz mention head-end controllers and the combination would not result in a number of head-end controllers coupled to each server module via at least two signal paths, wherein each communication between a head-end controller and a server module is coincidentally sent through the two signal paths as claimed. None of the references identify the special problems of delays in responding to subscriber requests or errors increasing as the demand placed upon the head-end in a

423837-1

USSN 09/540,178

Page 9

video distribution system increases, resulting in unacceptable viewing experiences or disrupting video sessions for the subscriber. Therefore, even if the cited references were combined, the resulting system would not address this problem.

Specifically, the combination of the references would not result in head-end controllers in a video distribution system, where the head-end controllers control video sessions for each subscriber by controlling the interaction and streaming of video information between the stream server at the head-end and the subscriber equipment. The Examiner's position is that the directors 216, 220 in Edmonds are the same as the claimed head-end controllers. (See Office Action, page 4, lines 4-7.) The directors 216, 220 in Edmonds recognize URL or IP addresses as being associated with a pool of servers and provide load-balancing to even out the load among the servers in the pool. (See Edmonds, Figure 5, col. 7 lines 44-50.) Thus, the directors 216, 220 in Edmonds are not the same as the claimed head-end controllers and have nothing to do with controlling video sessions in a video distribution system.

The other references cited, i.e., Imanaka and Sawicz, fail to make up for the deficiency of Edmonds. Imanaka is generally directed to an Ethernet communication redundancy method and fails to even suggest a video distribution system as claimed. Sawicz is generally directed to the problems of blocking and crosstalk in video switches. (See Sawicz col. 1, lines 43-56 and 66-67.) Sawicz fails to disclose any separate head-end controllers coupled to each server module via at least two signal paths, as claimed. Sawicz discloses entertainment servers 24 connected to an entertainment switching unit 22, without any separate head-end controllers. (See Sawicz, figure 2.) Thus, the combined teachings of Edmonds, Imanaka and Sawicz would not result in the claimed head-end controllers coupled to each server module via at least two signal paths, wherein each communication between a head-end controller and a server module is coincidentally sent through the two signal paths.

The combined teachings of Edmonds, Imanaka and Sawicz fail to establish a prima facie case of obviousness. Nothing in the references would have suggested modifying Edmonds with the Ethernet communication

423837-1

USSN 09/540,178
Page 10

redundancy method of Imanaka in combination with Sawicz other than by using applicant's specification as a template for arriving at the claimed invention. "Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor." Para-Ordnance Mfg. v. SGS Importers Int'l, 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995) (citing W.L. Gore & Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 1553, 220 USPQ 303, 311, 312-313 (Fed. Cir. 1983)). "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) (citing In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991)).

From all of the above, it appears that the examiner is picking and choosing parts of the prior art in an attempt to arrive at the claimed invention, in the absence of any teaching or suggestion that would have led an artisan to the claimed invention. Accordingly, the examiner has failed to establish a prima facie case of obviousness of the claimed invention.

As such, the applicant submits that claim 1 is not obvious and fully satisfies the requirements under 35 U.S.C. §103 and is patentable thereunder. Furthermore, claims 2-14 and 26 depend, either directly or indirectly, from independent claim 1 and recite additional features thereof. As such, and for at least the same reasons discussed above, the applicant submits that these dependent claims also fully satisfy the requirements under 35 U.S.C. §103 and are patentable thereunder. Therefore, the applicant respectfully requests that the rejection be withdrawn.

Claim 11

The Examiner has rejected claim 11 under 35 U.S.C. §103 as being unpatentable over Edmonds in view of Imanaka, Sawicz, and further in view of Deitz et al. (U.S. Patent No. 6,578,158, hereinafter "Deitz"). The rejection is respectfully traversed.

For the same reasons given above with respect to claim 1 and because Dietz is generally directed to computer memory systems and controlling

423837-1

USSN 09/540,178

Page 11

redundant arrays of independent disks, claim 11 is also patentable over the combination of Edmonds, Imanaka, Sawicz, and Dietz. (Dietz, col. 1, lines 8-12). The computer memory system of Dietz is different than the claimed video distribution system. For example, the computer memory system lacks a head-end and subscriber equipment. Dietz fails to teach or suggest the claimed head-end controllers of the video distribution system. There is no motivation or suggestion in the disclosure of the computer memory system of Dietz or the other references cited to make a combination for the claimed video distribution system with a head-end and associated subscriber equipment.

Claims 12-14

The Examiner has rejected claims 12-14 under 35 U.S.C. §103 as being unpatentable over Edmonds in view of Imanaka, Sawicz, Deitz and further in view of Miyamoto et al. (U.S. Patent No. 5,845,061, hereinafter "Miyamoto") The rejection is respectfully traversed.

For the same reasons given above with respect to claims 1 and 11 and because Miyamoto is generally directed to a client server alternation control system reduced in influence caused by alternation control of a server conducted when a fault has occurred, claims 12-14 are also patentable over the combination of Edmonds, Imanaka, Sawicz, Dietz, and Miyamoto. (Miyamoto, col. 1, lines 6-9). The client server alternation control system of Miyamoto is different than the claimed video distribution system. For example, the client server alternation control system lacks a head-end and subscriber equipment. Miyamoto fails to teach or suggest the claimed head-end controllers of the video distribution system. There is no motivation or suggestion in the disclosure of the client server alternation control system of Miyamoto or the other references cited to make a combination for the claimed video distribution system with a head-end and associated subscriber equipment.

USSN 09/540,178
Page 12

CONCLUSION

Thus, Applicants submit that the pending claims are in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Lea A. Nicholson or Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

2/28/06

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